IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2145 of 1992
With
FIRST APPEAL No. 2146 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NEW INDIA ASSURANCE CO LTD - Appellant(s)
Versus
BAGHABHAI UGABHAI & 2 - Defendant(s)

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Appearance :
MR SUNIT S SHAH for Appellant(s) : 1,
MR SURESH S PATEL for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 21/08/2006

ORAL JUDGMENT

1. By way of these appeals under Section 110-D of the Motor Vehicles Act the appellant Insurance Company has challenged the judgement and award dated 09.04.1992 passed by the Motor Accident Claims Tribunal (Aux.), Junagadh in M.A.C.P. No. 389 of 1984 and 350 of 1992.

2. It is the case of the original appellants that on 24.10.1983 they were travelling in Autorickshaw No. G.T.W. 5237 which was driven by opponent No. 1. The autorikshaw met with an accident due to negligent driving

of the original opponent No. 1 thereby resulting into death of one Ms. Ranibeh Hirabhai and injuring others. Therefore the heirs filed claim petition to the tune of Rs. 75,000/- in M.A.C.P. No. 389 of 1984 and another passenger Vallabhbhai Jadavbhai filed M.A.C.P. No. 350 of 1992 claiming Rs. 65,000/-.

3. Learned counsel for the appellants have submitted that the Tribunal failed to appreciate that there were in all 6 to 7 persons travelling in the insured vehicle at the time of the accident in contravention of the express provision contained in the Rule 118 of the Bombay Vehicles Rules and the specific condition of the policy to use it as a public carrier.

3.1 He has further placed reliance on the decision in the case of ***Mallawwa and others v Oriental Insurance Co. Ltd. and others reported in 1999 ACJ 1,***

4. Heard I have gone through the averments made in the appeal and documents placed on record including the award of the Tribunal. A perusal of the decision relied on by the learned counsel for the appellant is relevant at this stage and the same is considered. In the case of ***Mallawa and others(supra)*** the Apex Court has held that the

insurance company is not liable for death or injuries sustained by persons carried in a goods vehicle either along with their goods or after paying fare or gratuitously.

5. As a result of hearing and perusal of records, I am of the opinion that the contentions raised by the appellant is required to be accepted. The fact that the vehicle in question was a goods vehicle cannot be disputed and therefore the appellant cannot be held liable to undertake third party risk in a case where the vehicle is used for a purpose other than the one for which the policy is covered. In that view of the matter, the award of the Tribunal is required to be modified by not holding the present appellant liable for the compensation payable to the present respondent no.1.

6. In the premises aforesaid, the appeals are allowed. The awards of the Tribunal are quashed and set aside qua liability of the insurance company-present appellant. The amount deposited by the insurance company shall be refunded. It shall be open for the original claimants to recover the amount from the owner of the vehicle. However, if the amount is withdrawn by the original claimant the same shall not be recovered. It shall be

open for the Insurance Company to recover the same from the owner of the vehicle. The award of the tribunal are modified accordingly. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*